

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

STATUTORY REVIEW OF THE SYSTEM  
FOR REGULATING RATES AND CLASSES  
FOR MARKET DOMINANT PRODUCTS

Docket No. RM2017-3

**NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING  
NON-PUBLIC MATERIALS**  
(March 16, 2018)

The Postal Service hereby gives notice of filing documents non-publicly that identify the data and the quantitative assumptions underlying the financial forecasts reflected in Appendix A to the Postal Service's March 1, 2018 comments in this proceeding. As discussed in the Postal Service's March 15, 2018, Response to the Motion of the Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA—The Association of Magazine Media for Issuance of an Information Request in this proceeding, the Postal Service believes that the documents will be more than adequate to assist ANM *et al.* in preparing reply comments, given the limited purpose for which the Postal Service used Appendix A. The Postal Service is amenable to having the Commission make that information available under protective conditions to those party representatives to whom the Commission has already granted access to the non-public version of Appendix A.

The non-public documents consist of (1) a Microsoft Excel workbook that shows the derivation of the charts from financial data and (2) an Adobe PDF document that details the assumptions underlying that financial data. Public, redacted versions of these documents are appended to this notice, as well as an application for non-public treatment.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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March 16, 2018

**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC  
TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. These materials relate to the financial forecasts reflected in Appendix A to the Postal Service's March 1, 2018, comments in this proceeding. The materials consist of (1) a Microsoft Excel workbook that shows the derivation of the charts from financial data and (2) an Adobe PDF document that details the assumptions underlying that financial data. The Postal Service is filing these appendices separately under seal with the Commission. Redacted versions of the appendices accompany the Postal Service's public filing.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in

maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup>

In addition, the Postal Accountability and Enhancement Act of 2006 (PAEA) prohibits anything in the PAEA from “restrict[ing], expand[ing], or otherwise affect[ing] any of the rights, privileges, or benefits of” employees and labor organizations involved in collective bargaining with the Postal Service. Pub. L. No. 109-435, § 505(b), 120 Stat. 3198, 3236 (2006). That prohibition applies to the application of the provision that authorizes the Commission’s confidentiality rules. *Id.* § 602, 120 Stat. at 3240.

Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

Not applicable. The Postal Service is the only party with a proprietary interest in the sensitive business information contained in these materials.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

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<sup>1</sup> The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, including harms to deliberative process. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

The Microsoft Excel file contains forecasts of the Postal Service's net losses and liquidity, based on projections of its revenue and expenses. The Adobe PDF document explains the primary quantitative assumptions about volumes, prices, personnel expenses, and non-personnel expenses used to prepare the projections in the Microsoft Excel file.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

The forecasts contained in the files are used as important references in the Postal Service's process of making business decisions about a number of topics: pricing, collective bargaining, supply management, and so forth. As such, the information is subject to the deliberative process privilege. If the non-public information were disclosed publicly, it would have a chilling effect on management deliberations.

The projections reflect internal judgments and assumptions about various sensitive aspects of the Postal Service's business. The Postal Service does not routinely publicize detailed multi-year forecasts of its financial performance. The Postal Service has been unable to identify any other major delivery carrier that publicly discloses multi-year forecasts of financial performance, and it is unaware of any other business of comparable size doing so. Such information would not be disclosed publicly as a matter of good business practice in the private sector.

In addition, competitors could use the forecast information to analyze the Postal Service's possible market expectations and pricing plans and to focus sales and marketing efforts accordingly, to the detriment of the Postal Service. Disclosure of this information would also undermine the Postal Service's position in negotiating favorable

terms with potential customers, who would be able to ascertain critical information about the Postal Service's expectations. The lack of similar public disclosures by competitors or businesses that use the mail is a highly probative indicator that, in good business practice, such disclosure is considered to pose an undue risk of harm to the disclosing business.

Disclosure of personnel-expense assumptions could harm the Postal Service's position in bargaining and consultation with labor organizations. Those organizations could take the quantitative assumptions as a reference point for assessing (rightly or wrongly) the Postal Service's expectation of future bargaining and consultation outcomes, which they could then use to the Postal Service's detriment. Even disclosure of which personnel-expense assumptions impact the Postal Service's internal financial model could lead labor organizations to infer (rightly or wrongly) the relative significance of different aspects of personnel compensation and to plan their bargaining and/or consultation strategy around the perceived importance of such items to the Postal Service.

Similarly, suppliers to the Postal Service could take the quantitative assumptions as a reference point for assessing (rightly or wrongly) the Postal Service's expectation of future cost growth, which they could then use to the Postal Service's detriment in structuring their bids and negotiations.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

**Identified harm:** Public disclosure of the non-public information would provide labor organizations, customers, and/or suppliers extraordinary negotiating power to extract concessions.

**Hypothetical 1:** The redacted information is disclosed to representatives of a postal labor organization. The organization determines that the personnel-expense items shown in the assumptions document are a significant basis for postal management's financial forecasts, and concludes, accurately or not, that other aspects of personnel compensation are of less importance. The labor organization plans its bargaining or consultation strategy in expectation of concessions in those other areas, imposing greater pressure on the Postal Service than may be warranted, and (in the case of collective bargaining) potentially forcing interest arbitration that might otherwise have been unnecessary. Ultimately, this puts the Postal Service at a disadvantage in collective bargaining and results in unnecessary cost to the Postal Service.

**Hypothetical 2:** The redacted information is disclosed to representatives of a postal labor organization. The organization determines, accurately or not, that the quantitative assumptions as to personnel expenses reflect the Postal Service's baseline expectation for the upcoming period. The labor organization plans its bargaining or consultation strategy in expectation of concessions along those lines, imposing greater pressure on the Postal Service than may be warranted, and (in the case of collective bargaining) potentially forcing interest arbitration that might otherwise have been unnecessary.

Ultimately, this puts the Postal Service at a disadvantage in collective bargaining and results in unnecessary cost to the Postal Service.

**Hypothetical 3:** The redacted information is disclosed to representatives of a business that uses the mail. The business determines, accurately or not, that the quantitative assumptions as to volume and price trends reflect the Postal Service's baseline expectation for the upcoming period. The business plans its strategy in negotiating an agreement with the Postal Service accordingly and potentially wins terms more favorable to it (and detrimental to the Postal Service) than would otherwise have been mutually agreeable. This results in unnecessary lost revenue for the Postal Service.

**Hypothetical 4:** The redacted information is disclosed to representatives of a supplier to the Postal Service. The supplier determines, accurately or not, that the quantitative assumptions as to non-personnel expenses reflect the Postal Service's baseline expectation for the upcoming period. The supplier plans its bidding and negotiation strategy in the expectation that the Postal Service will accept a higher price than the supplier might otherwise have offered, and might thereby result in unnecessary cost to the Postal Service.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from (1) persons involved in competitive decision-making in the market for parcel and expedited services, as well as their consultants and attorneys; (2) persons involved in competitive decision-making for businesses that use the mail, as well as their consultants and attorneys; (3) representatives of postal labor

organizations, as well as their consultants and attorneys; and (4) representatives of current or potential future suppliers to the Postal Service, as well as their consultants and attorneys.

Beyond those entities, members of the general public should generally not be granted access to the non-public materials without strict, legally binding nondisclosure commitments, due to the risk of institutional harm to the Postal Service's internal decisionmaking process.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof;**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.